

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

JEWELS OF ANN PRIVATE SCHOOL  
and KENNETH ALEXANDER  
Respondents

Case No.: I-00-40204

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

JEWELS OF ANN PRIVATE SCHOOL  
and KENNETH ALEXANDER  
Respondents

Case No.: I-00-40207

**FINAL ORDER**

**I. Introduction**

These consolidated matters arise under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701, *et seq.*) and Title 29, Chapter 3 of the District of Columbia Municipal Regulations (“DCMR”). By Notices of Infraction (Nos. 00-40204, 00-40207), the Government charged Respondents Jewels of Ann Private Day School (“Jewels of Ann”), a Child Development Facility (“CDF”) and Kenneth B. Alexander (“Alexander”)<sup>1</sup>, with violations of 29 DCMR 311.1 (failure

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<sup>1</sup> In a submission made to this administrative court from Respondents dated August 17, 2000, Respondent Kenneth Alexander is identified as Respondent Jewels of Ann Private Day School’s

to permit an inspection of a child development facility)<sup>2</sup>, 29 DCMR 325.2 (admitting a child without a complete health examination report and appropriate immunizations)<sup>3</sup>, 29 DCMR 325.9 (failure to obtain an authorization from a parent or guardian for emergency medical treatment for a child)<sup>4</sup>, 29 DCMR 325.13 (failure to comply with a health examination requirement for employees of a child development facility)<sup>5</sup>, and 29 DCMR 325.5 (failure to ensure that staff has been trained to administer emergency first aid).<sup>6</sup>

Respondents operate a child development facility located at 2011 Bunker Hill Road, N.E. Notice of Infraction No. 00-40204 alleged that Respondents violated 29 DCMR 311.1 on July

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Business Manager. In correspondence dated November 16, 2000, Respondent Alexander also identifies himself as the “Director” of Respondent Jewels of Ann Private Day School. In both cases and during the oral hearing of these matters, he has held himself out as representing Respondent Jewels of Anne as well as himself.

<sup>2</sup> 29 DCMR 311.1 provides: “The Mayor and any other duly authorized official of the District having jurisdiction over, or responsibilities pertaining to, any child development facility, after presenting official credentials of identification and authority issued by the District, shall have the right either with or without prior notice, to enter upon and into the premises of any child development facility licensed under this chapter, or for which an application for license has been made, in order to determine compliance and to facilitate verification of information submitted on or in connection with an application for licensure pursuant to provisions of this chapter. The conduct of the authorized official shall be such that the entry and inspection shall take place with the least possible disruption to the program.”

<sup>3</sup> 29 DCMR 325.2 provides: “No infant or child shall be admitted to a child development facility without having first obtained a complete health examination by a licensed physician. The results of the examination shall be submitted to the caregiver or director of the child development facility on a form approved by the Mayor.”

<sup>4</sup> 29 DCMR 325.9 provides: “The parent or guardian of each infant or child admitted to a child development facility shall submit to the caregiver or director of the facility, on a form approved by the Mayor, authorization for emergency medical treatment for the infant or child.”

<sup>5</sup> 29 DCMR 325.13 provides: “Each child development facility employee shall have an annual health examination by a licensed physician. A written report stating that the person is free from tuberculosis and other disease in a communicable form shall be submitted by the physician to the facility caregiver or director.”

27, 2000 at that facility, and specified a fine of \$500.00. *See* 16 DCMR 3222.1(f). In separate charges arising from a re-inspection on August 23, 2000, Notice of Infraction No. 00-40207 alleged that Respondents violated 29 DCMR 325.2, 29 DCMR 325.9, 29 DCMR 325.13 and 29 DCMR 325.5 at the facility and sought a fine of \$500.00 for each of the alleged violations, except for the alleged violation of 29 DCMR 325.5 for which the Government sought a fine of \$100.00.<sup>7</sup>

By letter dated August 17, 2000 (and filed with the administrative court on August 23, 2000), Respondents entered a plea of Deny to the charge of refusing to permit a lawful inspection violating (29 DCMR 311.1) as set forth in the Notice of Infraction No. 00-40204 and requested a hearing. A hearing was held on that matter on September 28, 2000. At the hearing, Respondents moved to change their plea of Deny to a plea of Admit with Explanation and requested that the hearing record be kept open to provide Respondents an opportunity to submit evidence of substantial compliance prior to a decision on that charge. The Government did not object. For the reasons stated in the October 6, 2000 Order, the motion was granted, Respondents' plea was amended, and the hearing was continued until November 2, 2000.

At the November 2 hearing, Respondents offered written and oral evidence to support their claim that they had come into substantial compliance with regard to permitting lawful inspections and that they merited a reduction of the \$500.00 fine specified for that charge on Notice of Infraction No. 00-40204. Respondents also sought and were granted leave to offer

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<sup>6</sup> 29 DCMR 325.5 provides: "Basic first aid equipment and supplies shall be available at all times, and staff shall be trained to administer emergency first aid, including control of bleeding and administration of artificial respiration."

testimony in support of a request to reduce the specified fines arising from the four charges contained in Notice of Infraction No. 00-40207. At the November 2 hearing, Respondents requested additional time to supplement the record with documentation supporting their request for a reduction or suspension of those fines. The Government consented to this request and the record in these consolidated matters was held open until November 17, 2000. Additionally, the administrative court ordered *sua sponte* and without objection that case Nos. 00-40204 and 00-40207 be consolidated.

Respondents timely filed a supplemental letter on November 16, 2000. The Government elected to file a responsive submission on November 27, 2000. The Docket Clerk received no further submissions. Accordingly, this matter is now ripe for adjudication.

## **II. Summary of Evidence**

### **A. 29 DCMR 311.1 - Failure to permit an inspection of the premises**

It is undisputed that on July 27, 2000, Respondents did not permit the Government's inspector, Pushpa Agarwal, to enter their child development facility located at 2011 Bunker Hill Road, NE. Respondents concede that the inspector should have been admitted and assert that they have taken appropriate measures to train staff on the inspection process. All parties agree that Respondents permitted all subsequent inspections.

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<sup>7</sup> See 16 DCMR 3222.1(l); 16 DCMR 322.1(p); 16 DCMR 3222.1(r); 16 DCMR 3222.2(j).

**B. 29 DCMR 325.2 - Admitting a child without a complete health examination report and appropriate immunizations**

It is undisputed that at the time of the Government's inspection on August 23, 2000, a number of children lacked complete health records on file with the facility. Respondents, in their November 16 submission, conceded that even as of that date, five (5) children still lacked records of required health examinations. The Government corroborated this concession, in its November 27 responsive submission, noting that as of that date, (nearly two months after Respondents' first hearing), there were still four children for whom the facility lacked required documentation. While the Respondents and the Government differ on the details regarding the types of health exams uncompleted, the same children were identified by all parties for the periods at issue. Respondents do not deny that all examinations had not been completed as of November 21, 2000, nearly 90 days after Respondents were cited for this violation.

**C. 29 DCMR 325.9 - Failure to obtain an authorization from a parent or guardian for emergency medical treatment for a child**

In response to the charged violation of 29 DCMR 325.9, Respondents' November 16 submission alleges that they previously had been in compliance with regulations concerning the maintenance of emergency medical authorization forms for children under their care, and that it was their intent to return to compliance. In their submission, Respondents asserted that children are required to have all legally required medical authorizations in place prior to being permitted to attend their facility. They further asserted any children without such authorizations on file are

dismissed from school. During the hearing, the Government agreed that Respondents had come into substantial compliance with regard to the violation of 29 DCMR 325.9.

**D. 29 DCMR 325.13 - Failure to comply with a health requirement for employees of a child development facility**

It is undisputed that at the time of the Government's inspection on August 23, 2000, the facility lacked copies of mandatory health status reports for several staff of the facility. Respondents, in their November 16 submission, asserted that by that date they had come into substantial compliance and had complete health reports on file for all staff. Respondents asserted, however, that one staff member, Mr. Craig, was awaiting a doctor's signature attesting to the health report's veracity. The Government responded that Mr. Craig's report was insufficient and as a result Respondents were not in substantial compliance. The Government's response does not address or explain the level of "insufficiency" of the health report nor does it appear to challenge the authenticity of the report.<sup>8</sup>

**E. 29 DCMR 325.5 - Failure to provide basic first aid equipment or supplies to ensure that staff has been properly trained to administer emergency aid**

At the November 2 hearing, Respondents asserted that they had come into compliance with 29 DCMR 325.5 by ensuring that all staff had first aid training. Respondents supported this claim by submitting a CPR/First Aid Training and Certification registration form for Kenneth B. Alexander for a training class beginning on October 25, 2000. This certification was filed with Respondents' other hearing submissions on October 25, 2000. During the hearing, the

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<sup>8</sup> See generally, *DOH v. U & T Grocery*, OAH Final Order, I-00-30102/30108 (April 6, 2001).

Government conceded that Respondents eventually had come into substantial compliance with regard to the requirement that staff be trained in first aid.

### **III. Findings of Fact**

Based on the documentary evidence, the testimony of the witnesses, and the entire record in these consolidated matters, the administrative court makes the following findings of fact by a preponderance of the evidence:

1. At all relevant times Respondent Alexander served as the Business Manager and/or Director of Respondent Jewels of Ann Private Day School, Inc.
2. Respondents Alexander and Jewels of Anne operated a Child Development Facility located at 2011 Bunker Hill Road, N.E. on July 27, 2000 and August 23, 2000 and at all times up to and including November 27, 2000.
3. By their plea of Admit with Explanation, Respondents have admitted to the essential factual elements to sustain the charge of violating 29 DCMR 311.1 on July 27, 2000 as specified in Notice of Infraction No. 00-40204.
4. By their plea of Admit with Explanation, Respondents have admitted to the essential factual elements to sustain the charge of violating 29 DCMR 325.2; 29 DCMR 325.9; 29 DCMR 325.13; and 29 DCMR 325.5 on August 23, 2000 as specified in Notice of Infraction No. 00-40207.
5. Respondents have acknowledged responsibility for their unlawful conduct alleged in Notice of Infraction Nos. 00-40204 and 00-40207.

6. Respondents initiated remedial staff training and instruction to correct and terminate previous conduct that resulted in the Government's inspectors being denied lawful access to inspect the facility on July 27, 2000.
7. As of November 27, 2000, Respondents were in substantial compliance with 29 DCMR 325.9 in that they had obtained the required student emergency medical authorizations. As of November 27, 2000, Respondents were in substantial compliance with 29 DCMR 325.5 in that all staff had received required first aid training.
8. Student health examination records required for compliance with 29 DCMR 325.2 were not on file for at least five (5) children on August 23, 2000. Contrary to Respondents' assurances, this problem was allowed to persist for nearly three months, through at least November 17, 2000, with regard to at least four (4) of those five (5) children.
9. A health report was not on file for one (1) staff member as of August 23, 2000. The problem was corrected to the point of substantial compliance by November 17, 2000.
10. There is no evidence of a history of non-compliance with District of Columbia laws and regulations applicable to Respondents prior to July 27, 2000, the date of the first infraction charged. There is record evidence supporting a finding of a history of non-compliance applicable to the August 23, 2000 infractions as a result of the July 27, 2000 violation that was charged and admitted.



#### **IV. Conclusions of Law**

Respondents are liable for violating 29 DCMR 311.1 on July 27, 2000. Respondents are liable for violating 29 DCMR 325.2, 29 DCMR 325.9, 29 DCMR 325.13, and 29 DCMR 325.5 on August 23, 2000.

Respondents have requested a suspension or reduction of the \$2,100.00 in specified fines sought by the Government for their violations under the two pending Notices of Infraction. Several factors support a limited reduction but not a suspension of the applicable fines in this case. In their testimony, Respondents acknowledged and accepted responsibility for their unlawful conduct. Respondents also moved promptly to correct the underlying conditions that led to the violation of 29 DCMR 311.1 by establishing training procedures to ensure that Government inspectors were admitted upon lawful demand. Moreover, at the time of Respondents' violation of 29 DCMR 311.1, the record reflected no documented history of non-compliance.<sup>9</sup> Respondents eventually remediated the circumstances that led to their violations of 29 DCMR 325.5 and 325.9. *See* D.C. Code §§ 6-2703(b)(6) and 6-2712 (a); *see also* 18 U.S.C. § 3553; U.S.S.G. § 3E1.1 (containing objective criteria used by the United States in numerically adjusting penalties for offenses involving conduct not dissimilar to that which is at issue in this case).

Notwithstanding the foregoing, many factors support little or no reduction or suspension of the applicable fines. With respect to 29 DCMR 311.1, the regulation at issue is a key part of a

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<sup>9</sup> Of course, the same cannot be said of Respondents' violations that occurred after July 27 such as those documented in Notice of Infraction No. 00-40207.

regulatory scheme to protect children from reasonably avoidable risks in a childcare setting. Respondents, as licensees in a regulated business, bear the burden of avoiding unsafe and illegal conditions. The process of subjecting a business to regular state-sponsored inspections is a critical component of a governmental health and safety compliance program. In electing to provide services in a highly regulated industry such as childcare, a licensee must make its facility open and accessible to all necessary inspections. In this case, the licensee refused a lawful inspection. Because inspections are so important, the unlawful denial of entry is ordinarily a very serious matter. In this case it offsets most of the mitigating evidence offered by Respondents because of the significant inspection delay that resulted. An inspector's inability to promptly inspect a facility places the health and safety of the children at heightened risk from undiagnosed and uncorrected dangers. *See, e.g., Rush v. Obledo* 756 F.2d 713 (9<sup>th</sup> Cir. 1985) (upholding broad authority for administrative searches of businesses providing care and supervision to children).

The provisions of 29 DCMR 325.13 require that the health report on file "stating that the person is free from tuberculosis and other disease in a communicable form. . . ." Parents expect the Government to provide reasonable public health safeguards for their children when they place them in a childcare facility. For the Government to do that, employees must be up to date in their health examinations. *See generally, Tic Toc Around the Clock Child Care Services v. Ohio Dept. of Human Services*, No. CT99-0022, 2000 Ohio App. LEXIS 4505, at \*5-8 (Ohio Ct. App. Sept. 22, 2000) (revocation of the child care facility's license was upheld for health record-keeping violations). Although Respondents eventually came into substantial compliance with regard to this violation, there was a substantial period of non-compliance that preceded it.

The provisions of 29 DCMR 325.2 require that all children have completed health forms on file with the childcare facility. Despite this requirement, the administrative court found that at least four (4) children lacked complete health forms for approximately 3 months, if not more. The reasons behind the requirement in 29 DCMR 325.2 are clear. A child care facility must be in a position to report quickly on the health conditions of the children in its care and to address them when appropriate. To do this, a childcare facility must obtain complete health examination forms for all children it admits. Without such forms, it operates in the dark with respect to the health needs of each child and it unreasonably places other children at risk of infectious diseases. The risk of infection is compounded by the fact that a childcare facility, by its nature, places children in close quarters for extended periods. *See, e.g., C. Hale and J. Polder, The ABC's of Safe and Healthy Childcare* Pg. 13-20 (U.S. Centers for Disease Control, 1996). Respondents' utter failure to cure this violation after nearly three months is inexcusable and no reduction of the specified fine is warranted.

While the limited mitigating facts of this case are largely offset by aggravating circumstances, this administrative court concludes that a very limited reduction of certain fines is appropriate for the reasons stated. Accordingly, the \$2,100.00 in fines sought by the Government will be reduced \$1,900.00 as follows:

<b><u>Violation</u></b>	<b><u>Fine Sought</u></b>	<b><u>Fine Assessed</u></b>
29 DCMR 311.1	\$500.00	\$ 475.00
29 DCMR 325.2	\$500.00	\$ 500.00
29 DCMR 325.9	\$500.00	\$ 425.00
29 DCMR 325.13	\$500.00	\$ 450.00
29 DCMR 325.5	\$100.00	\$ 50.00
<b>TOTAL</b>		<b>\$1,900.00</b>

Therefore, upon Respondents' answer and plea, their application for reduction or suspension of the fines, the Government's response, and the entire record in this case, it is hereby this \_\_\_\_\_ day of \_\_\_\_\_, 2001:

**ORDERED**, that Respondents, who are jointly and severally liable, shall pay a total of **ONE THOUSAND NINE HUNDRED DOLLARS (\$1,900.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

**ORDERED**, that if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Code §

6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C.  
Code § 6-2703(b)(6).

**FILED**      **06/29/01**

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Paul Klein  
Chief Administrative Law Judge